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WASHINGTON

CABINET AFFAIRS STAFFING MEMORANDUM

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ALL CABINET MEMBERS Baker
Vice President State Treasury Defense Deaver Allen Anderson
State
Defense
Attorney General Darman (For WH Staffing)
Interior
Agriculture Commerce Labor HHS HUD Transportation Energy Counsellor OMB USTR CCNRE/Eoggs CCNRE/Eoggs
CEA CCHR/Carleson CCHR/Carleson CEQ CCCT/Kass CCCT/Kass OSTP CCFA/McClaughry CCEA/Porter

are the agenda and background papers for Agenda items #1 and #2 for the Friday, January 8 (tomorrow's) meeting of the Cabinet Council on Commerce and Trade, scheduled for 1:00 PM in the Cabinet Room. Tomorrow's meeting will be chaired by the President, and attendance will be restricted to PRINCIPALS ONLY

An additional paper on Agenda item #1, prepared by the Council of Economic Advisers, and a paper on Agenda item #3 are forthcoming. Please note that any comments/views on the attached paper on Auto Industry Issues are due by 4:00 PM today.

RETURN TO:

Craig L. Fuller Assistant to the President for Cabinet Affairs 456-2823

CONTACT:

Kenneth Cribb, Jr. Assistant Director

Office of Cabinet Affairs

456-2800

THE WHITE HOUSE WASHINGTON

CABINET COUNCIL ON COMMERCE AND TRADE

January 8, 1981

1:00 PM

Cabinet Room

AGENDA

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1.	Auto	Industry	Issu	les/	CM1.55

		mass	*	
The second secon	502, 2 944 a.	Trade Relations with Japan		Ambassador Brock
	b.	25% Tariff on Non-duty Trucks		Ambassador Brock
	c.	Clean Air Act Amendments	•	The Vice President
	d.	Auto Task Force	4 *	Secretary Baldrige
	e.	Pending Regulations		The Vice President
	f.	Section 208/Comfort Convenience		Secretary Lewis
	g.	Tax Credit Proposal		Chairman Weidenbaum
2.	U.S	Canada Economic Relations/CMl39		Ambassador Brock
3.	Ste	el Industry Update/CM96	err in antique.	Secretary Baldrige

THE WHITE HOUSE WASHINGTON

JANUARY 7, 1982

MEMORANDUM FOR THE CABINET COUNCIL ON COMMERCE AND TRADE

FROM:

CRAIG L. FULLER

SUBJECT:

AUTO INDUSTRY ISSUES

Since the President's meeting with the automobile manufacturers, several issues have been identified for consideration by the administration. It would be useful at the meeting of the Cabinet Council on Commerce and Trade on Friday, January 8, 1982 with the President for the following issues to be discussed:

Trade Relations with Japan

Our trade relations with Japan should be reviewed. Various options have been mentioned by the auto leaders and by members of the administration. Non-tariff trade barriers that offer relief for the American auto industry should be identified. Any acceptable potentially effective measures should be presented for the President's consideration. ACTION: USTR

25% Tariff on Non-duty Trucks

The industry expressed a concern that this tariff might be dropped in trade talks during 1982. Since this would disadvantage the U.S. manufacturers, there is serious concern about such a possibility among the U.S. auto manufacturers. A status report and/or recommendation should be presented.

ACTION: USTR

Clean Air Act Amendments

Administration strategy on the Clean Air Act should be reviewed with the President. A recommended position on H.R. 5252 should be presented as well as any important strategy considerations.

ACTION: The Vice President

Auto Task Force

The President should be given a status report on the Automobile Task Force which is now a responsibility of the Department of Commerce. The industry identified this as an important Task Force because it provides a focus for important issues.

ACTION: Department of Commerce

Pending Regulations

While very complimentary of the administration's overall efforts to reduce the regulatory burden on the industry, two areas of continued interest were identified: bumper regulations and the .2 gram/mile particulate standard. A status report and/or recommendations should be made on both issues.

ACTION: The Vice President

Section 208/Comfort and Convenience

It has been suggested that Comfort and Convenience standards be delayed for one year. A status report and/or recommendation should be made. ACTION: Department of Transportation

Tax Credit Proposal

Various tax credit proposals have been advanced. The most often mentioned is a \$1,500 tax credit on cars manufactured in the U.S. Variations involve a credit based on "domestic content of the vehicle" as well as a credit specifically targeted to fuel efficient automobiles. The pros and cons of the tax credit proposal should be reviewed from the standpoint of its actual value to the industry, its cost and its general policy implications.

ACTION: Council of Economic Advisers

Comments on these matters, views in writing for review by the President and additional issues should be forwarded to the Office of Cabinet Affairs by 4:00 p.m. Thursday, January 7, 1982.

THE UNITED STATES TRADE REPRESENTATIVE WASHINGTON 20506

January 6, 1982

MEMORANDUM TO: Members of the President's Cabinet Council

on Commerce and Trade

FROM: Ambassador William E. Brock

SUBJECT: Update on U.S.-Canada Bilateral Investment

Issues

Background

At the November 3 meeting of the Cabinet Council on Commerce and Trade (CCCT), it was decided to continue our intensified efforts to resolve our differences with Canada over its National Energy Program (NEP) and the operation of its Foreign Investment Review Agency (FIRA) through bilateral consultations. It was also decided at that time for me to submit to the Canadian Government a detailed list of specific U.S. concerns regarding the NEP and FIRA in order to facilitate our discussions. Should these senior-level consultations fail to resolve our differences, the CCCT was of the opinion that we should then follow established U.S. procedures for addressing unreasonable and discriminatory foreign trade and investment practices, including raising our concerns in appropriate international fora.

Recent Administration Efforts

Our interagency efforts to reach a bilateral resolution of our problems with Canada have continued in earnest, but, unfortunately, without satisfactory results. The Canadian Government did attempt to address some of our concerns in the presentation of the federal budget on November 12. The budget publicly committed the Canadian Government 1) not to extend NEP policies to other sectors; 2) not to expand, for the time being, FIRA's mandate; and 3) to complete an administrative review of FIRA. However, the announcements were not unexpected and merely confirmed statements previously given informally by some Canadian officials. More importantly, they failed to modify the NEP in any way or to address our concerns over the current operation of FIRA.

Therefore, on December 2, I transmitted to the Canadian Government a letter on behalf of the U.S. Government which detailed our specific concerns over the NEP and FIRA. This letter was intended to clarify for the Canadian Government our key concerns in order to facilitate the bilateral discussions. Unfortunately, the Canadian response failed to indicate any interest by the Canadians in meeting any of our concerns.

Our continued attempts to resolve our problems through bilateral consultations have met a similar fate. Not only have the Canadians failed to indicate any predilection to modify their policies, but a key piece of the NEP implementing legislation was enacted by the Canadian Parliament just before Christmas.

An interagency decision was subsequently reached to shift our discussion of certain of these issues to a multilateral context, specifically within the General Agreement on Tariffs and Trade (GATT). On January 5, a letter was transmitted to the Canadian delegation in Geneva requesting formal consultations under the GATT concerning certain practices associated with the operation of FIRA.

Following a conversation I had with Canadian Foreign Minister Mark MacGuigan, I decided to invite the Canadian Government to participate in the trade discussions which are scheduled later this month in Florida with the European Community and Japan. This meeting will provide a potentially good opportunity to discuss implications for the world trading system of Canadian investment and energy policies.

Next Steps

1. Continue to raise U.S. concerns over the NEP and FIRA in a multilateral context.

Until recently, the only multilateral review of these Canadian policies has been a discussion of the NEP in the Organization for Economic Cooperation and Development (OECD). We should also now initiate discussions within the OECD on the operation of FIRA. Concerning our recently-initiated discussions in the GATT, we should be prepared to utilize the dispute settlement provisions of the GATT if our consultations within that forum should fail to resolve our concerns. I am also prepared to introduce the issue of the Canadian energy and investment policies as embodied in the NEP and the FIRA during my discussions with the EC, Japan and Canada later this month in Florida.

2. Continue senior-level bilateral consultations

Although such consultations up until now have failed to resolve any of our major concerns, continued bilateral discussions should be continued only as long as the Canadian Government indicates a willingness to seriously consider our concerns with a view to resolving our differences. In this regard, I will be meeting with senior Canadian officials at the end of this month in Ottawa in conjunction with a trip I have scheduled to Toronto to deliver a speech.

3. Begin a reassessment of possible U.S. actions in response to the NEP and FIRA

If our bilateral and multilateral efforts should fail to resolve our problems, we should be prepared to take appropriate actions to protect U.S. interests. The Trade Policy Committee (TPC) on October 13 considered a paper which listed various options and specific actions available for use in response to Canadian investment and energy problems associated with the NEP and FIRA. An updated and revised version of that paper will be reviewed by the TPC on January 12.

This paper will recommend that I raise our FIRA and NEP problems at the quadrilateral meeting, emphasizing the multilateral nature of the problem and the damage it does to our efforts in developing a more open international and investment environment. It will also recommend initiation of the objective public discussion of Canadian policies.

The public discussion option is likely to have the greatest impact on the Canadian Government view as to how serious we view the problems created by FIRA and the NEP. At the same time it would lay the groundwork for any additional actions. This approach would also have little or no negative economic impact on the U.S. economy.

Coincident to the public discussion would be the initiation of an interagency task force under the TPSC to look at all the available actions that could be taken in response to FIRA and the NEP. This group should report back to the TPC with its recommended actions as well as a recommendation on whether a 301 action should be self-initiated. We should also inventory the ongoing trade-related negotiations with Canada. The intent of this would be to decide where we should be as responsive to Canadian concerns as they are to our concerns on the NEP and FIRA.

Finally, now that Bill C-48 has passed and the Energy Security Act has not been revised, it would appear appropriate for us to meet again with representatives of the U.S. oil and gas industry on the impact of the NEP and possible U.S. actions.

THE UNITED STATES TRADE REPRESENTATIVE WASHINGTON 20506

December 2, 1981

The Honorable Gerald E. Shannon Charge d'Affaires Embassy of Canada 1746 Massachusetts Ave., N.W. Washington, D.C. 20036

Dear Mr. Shannon:

Our two countries have held numerous bilateral consultations at various levels over the past year in which we have expressed deep concern about the operation of the Foreign Investment Review Agency (FIRA), the National Energy Program (NEP), and the Committee on Mega-project Industrial and Regional Benefits (CMIRB). I want to take this opportunity to express my appreciation for the growing understanding shown by your Government over the course of these bilateral consultations, particularly during the October 13 meeting between Secretary Regan and Ministers MacEachen and MacGuigan. In conversations held subsequently, we have discussed the need for us to state our principal areas of specific concern. Thus this letter.

Let me begin by restating the fact that the United States especially welcomes the commitment made by the Government of Canada that there will be no expansion of FIRA's mandate or extension of the policies embodied in the NEP to other sectors. We believe that these pronouncements represent a positive step in meeting some of the concerns of the United States Government as well as some of the concerns held by international investors about trends in Canadian economic policy.

Talso want to take this opportunity to express my appreciation for the assurance given by Deputy Minister Johnstone in a recent meeting with my Deputy, David Macdonald, that CMIRB's objective is solely to ensure that Canadian suppliers have a full and fair competitive opportunity to bid on major projects, and not to coerce the project owners/sponsors into sourcing from Canadian firms. However, I want to emphasize that we will be monitoring closely the activities of CMIRB, and would object to the imposition by CMIRB of any requirements that companies report on or justify their use of foreign goods and services or any policies which would prevent firms from making decisions relating to sourcing of purchases on commercial grounds.

As you know, there remain a number of very serious objections on our part to the Canadian Government's current and proposed investment, energy and industrial policies. At various levels, officials of the United States have indicated to Canadian officials the apparent inconsistency of aspects of the FIRA and the NEP with international principles and standards of non-discrimination, equity and liberal trade, to which Canada adheres. While the Canadian Government has decided to limit the expansion of FIRA's responsibilities and the extension of the NEP principles to other sectors, many of our concerns about the current practices and proposals remain.

So far, United States Government action in response to these policies has been limited to consultation, despite great pressures from the private sector and the Congress. We cannot, however, continue simply to discuss matters without substantial movement both on the FIRA and on the NEP. Therefore, as a follow-up to both Secretary Regan's visit to Ottawa last month and the recent budget address, we have agreed in Washington that it could be useful to state clearly in writing our key concerns with the operation of the FIRA and the NEP.

Let me emphasize at the outset that we are not opposed to the Canadianization objective of the NEP and the screening of foreign investment by the FIRA per se. We do not question the sovereign right of Canada in these respects. Our concern is with a number of the policy measures that your Government uses or proposes in order to achieve these goals. Our objective throughout our bilateral consultations has been to seek modification of the methods being employed by your Government in the pursuit of these objectives so that Canadian practice would be in compliance with Canada's international obligations, especially in the GATT and the OECD, and with internationally accepted principles in its treatment of foreign investors.

In view of the legislative timing of C-48, the most pressing of the NEP issues is the "back-in" provision. While we have not completed our legal review of the paper you submitted to us on this subject, this review has proceeded sufficiently to raise serious questions in our minds. It is important, therefore, that we have an early opportunity to discuss the provisions of C-48 with a view to modifications which we believe would be necessary to make it consistent with accepted international practice. As you can well understand, success in dealing with this issue may very well affect the chances for success of our consultations on the NEP and the FIRA.

We are seriously concerned about the following discriminatory and inequitable measures associated with the operation of the FIRA and the NEP. The first two practices which concern us are directly trade-related and, we believe, are contrary to Canada's international obligations under the General Agreement on Tariffs and Trade (GATT). The other practices are of equal or greater importance and raise major issues of international policy and principle. It is most important that the first two practices be eliminated, and that the others be eliminated or modified as appropriate.

Foreign Investment Review Agency

- Trade-related performance requirements, such as undertakings to purchase Canadian goods and services, to reduce imports, or to export specific quantities or percentages of production;
- Restrictions on foreign firms seeking to distribute their own products in Canada;
- 3. Undertakings which effectively require the relocation of business activity from other countries to Canada;
- 4. Undertakings which contain obligations to transfer to Canada assets such as patents without charge, or at less than fair price;
- 5. Absence of clear guidelines to provide potential foreign investors with a full understanding of FIRA objectives and requirements;
- 6. Imposition of new performance requirements by FIRA when ownership of a Canadian corporation has simply been transferred from one foreign corporation to another (i.e., the degree of foreign ownership has not increased); approval for ownership transfer in such cases should be required where this is necessary under other provisions of Canadian law, e.g., anti-trust;
- 7. Lengthy time required for approval or disapproval of FIRA applications after an applicant makes his initial representation;
- 8. Low FIRA threshold levels for assets and employment, which subject small businesses to the FIRA process.

National Energy Program

A. Back-in Proposal

- Absence of provisions that grandfather or exempt all holders of exploration agreements, permits or leases which have already established the existence of commercially significant quantities of oil or gas, or have undertaken significant exploration expenditures, or have leases in which PetroCanada already has a 25 percent or larger interest;
- 2. Absence of payments proportionate to the asset value of the relinquished holdings, or to an equitable portion of the future revenues which firms took risks to earn;

B. Petroleum Incentives Payments

- Discrimination against foreign firms in the Petroleum Incentives Program;
- The potential for highly discriminatory, restrictive and uncertain implementation of control criteria in allocating PIP grants;

C. Production on Canada Lands

Requirement of fifty percent Canadian ownership and control for production on Canada Lands; and

D. Gas Policy

1. Requirement that Canadian ownership be considered in obtaining access to both natural gas export licenses and Natural Gas Bank benefits.

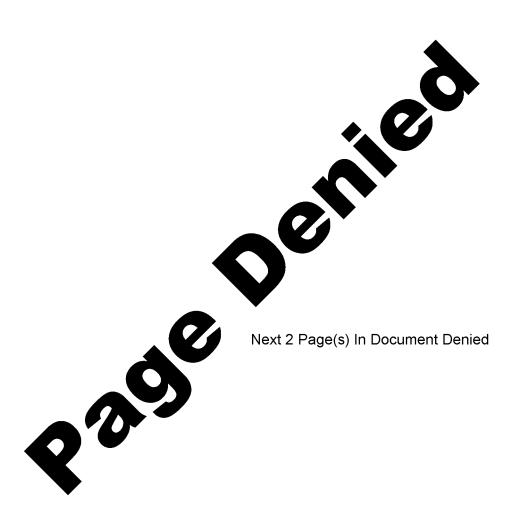
I have discussed these issues with Secretaries Haig, Regan and Baldrige, who share my balief that it is essential to resolve these issues if we are to arrive at a mutually acceptable resolution of our differences. Given the growing pressures

within the United States for a response to the problems raised by the above issues, I would hope that your Government would be in a position to respond to the points raised at the earliest possible date.

Very truly yours,

WILLIAM E. BROCK

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E.O. 12065: N/A
TAGS: ETRD, GATT, CA
SUBJECT: FIRA REQUEST FOR ARTICLE XXII CONSULTATIONS

FOLLOWING LETTER WAS SENT TO CANADIAN MISSION ON JANUARY 5:

BEGIN TEXT:

DEAR MR. AMBASSADOR:

WY AUTHORITIES RAVE INSTRUCTED ME TO REDUEST ON BEHALF OF THE UNITED STATES, CONSULTATIONS WITH THE GOVERNMENT OF CANADA UNDER ARTICLE XXII: I OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE WITH REGARD TO CERTAIN MEASURES TAKEN UNDER THE CANADIAN FOREIGN INVESTMENT REVIEW ACT (FIRA). THE UNITED STATES IS CONCERNED ABOUT THE CONSISTENCY OF PRACTICES UNDER THE FIRA WITH CANADA'S OBLIGATIONS UNDER THE GATT. AMONG THE ISSUES OF PRINCIPAL CONCERN TO US. UNITED STATES WISHES TO CONSULT REGARDING THE PRACTICE UNDER THE FIRA OF ENTERING INTO AGREEMENTS WITH PRIVATE INDIVIDUALS OR COMPANIES INVESTING IN CANADA TO GIVE PREFERENCE TO THE PURCHASE OF CANADIAN GOODS OVER IMPORTED GOODS. WHILE WE ARE AWARE THAT SUCH COMMITMENTS, HOWEVER NEGOTIATED, ARE CHARACTERIZED BY THE CANADIAN GOVERNMENT AS "VOLUNTARY" IN ORIGIN, IT IS OUR UNDERSTAND-ING THAT THEY ARE ENFORCEABLE UNDER CANADIAN LAW ONCE ONCE THEY ARE APPROVED BY THE CANADIAN GOVERNMENT AS PART OF AN INVESTMENT PROPOSAL. WE CONSIDER THAT SUCH LEGALLY ENFORCEABLE COMMITMENTS CONSTITUTE REQUIREMENTS TO ACCORD TREATMENT TO IMPORTED PRODUCTS LESS FAVORABLE THAN THAT ACCORDED TO LIKE PRODUCTS OF NATIONAL ORIGIN, AND THAT THESE REQUIREMENTS ARE THEREFORE CONTRARY TO CANADA'S OBLIGATIONS UNDER ARTICLE III OF THE GATT. FURTHER, WE BELIEVE THAT SUCH REQUIREMENTS RAISE QUESTIONS UNDER OTHER PROVISIONS OF THE GATT.

- WE ALSO WISH TO DISCUSS CERTAIN OTHER PRACTICES UNDER THE FIRA THAT ARE QUESTIONABLE UNDER THE GATT, INCLUDING EXPORT PERFORMANCE REQUIREMENTS AND LIMITATIONS ON DISTRIBUTION ACTIVITIES.

- WE WOULD ASK THAT SUCH CONSULTATIONS BE HELD IN MID-JANUARY, OR AS SOON THEREAFTER AS IS MUTUALLY CONVENIENT. I HAVE SENT A COPY OF THIS REQUEST TO THE DIRECTOR-GENERAL FOR CIRCULATION TO THE CONTRACTING PARTIES.

SINCERELY, WARREN A. LAVOREL, DEPUTY CHIEF OF MISSION-END TEXT. SMITH

LIMITED OFFICIAL USF

THE WHITE HOUSE

CABINET COUNCIL ON COMMERCE AND TRADE



1:00 PM

Cabinet Room

AGENDA

1.	Auto Industry Issues/CM155
	Tasues/CM155

- a. Trade Relations with Japan
- b. 25% Tariff on Non-duty Trucks
- c. Clean Air Act Amendments
- d. Auto Task Force
- e. Pending Regulations
- f. Section 208/Comfort Convenience
- g. Tax Credit Proposal
- 2. U.S. Canada Economic Relations/CM139
- 3. Steel Industry Update/CM96

Ambassador Brock

Ambassador Brock
The Vice President

.

Secretary Baldrige

The Vice President

Secretary Lewis

Chairman Weidenbaum

Ambassador Brock

Secretary Baldrige

METING INFORMATION

ES/MI # 88

5 January 1982

MEMORANDUM FOR: See Distribution

SUBJECT

Meetings

Type of Meeting	:	Cabinet Counsel on Commerce	and Trade
Date	•	Friday, 8 January	.*
Time	•	1:00 p.m.	•
Place	•	Cabinet Room	
Chaired By	• •	Possibly President /	
Principal Only?	:	Yes	
Subject/Agenda		(1) Steel Industry Update	
		(2) US/Canada Economic Rela	ations
When to Expect Pape		Danage will be forwarded	
Time Info Received		Papers will be forwarded Patsy, Office of the Cabinet, 2	2:45 p.m.
			•

Anne

STAT-

Distribution:

O/DCI (Doris)

O/DDCI (Eleanor)

EXDIR

DDI (Sherry)

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